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NEGOTIATION AS A MEANS OF QUANTIFYING
INDIAN WATER RIGHTS

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THE FEDERAL IMPACT
ON STATE WATER RIGHTS

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*The views expressed herein are those of the author and do not necessarily represent the position of the United States Department of the Interior, where the author is employed.

I. INTRODUCTION

A. Indian reserved water rights have been quantified until recently almost exclusively by adjudication

1. Increasing demand for scarce water supplies by non-Indians has led some to conclude that vested but unquantified Indian reserved rights will adversely affect growth in the non-Indian economy. Assumed in that conclusion is that competition for water necessarily is a "zero sum" conflict: that is, for every acre foot of water adjudicated to the use of an Indian tribe there is a corresponding loss to non-Indian water users. This assumption appears to underlie the decisions in the following cases:

a. Arizona v. California, ___ U.S. ___,
103 S.Ct. 1382, 75 L.Ed.2d 318
(1983),

b. Nevada v. United States, ___ U.S. ___,
103 S.Ct. 2906, 77 L.Ed.2d 509
(1983)

c. In Re: The General Adjudication of
All Rights to Use Water in the Big
Horn River System and All Other
Sources, State of Wyoming, Civil No.
4993 (Dist. Ct. 5th Jud. Dist. Wyo.
May 10, 1983)

2. In many situations improved water management can result in a water supply that is sufficient to meet present and future Indian and non-Indian needs. Conservation measures including revised water pricing, installation of water meters, construction of lined or enclosed conveyance facilities, and otherwise improved irrigation efficiencies all are likely to increase the supply of water available for beneficial use. Few of those techniques or major projects, such as water storage and water importation facilities, can be required conveniently or legally in the context of an adjudication.

3. Continued pursuit of adjudications as a means of quantifying reserved water rights generally is disadvantageous perhaps more for non-Indian water users than for Indians.

a. The elements of the reserved rights doctrine provide formidable protection to Indian claimants.

i. The reserved right vests with a priority date no later than the creation of the reservation; it cannot be lost by nonuse. Winters v. United States; Arizona v. California, 373 U.S. 546, 600 (1963); Cappaert v. United States, 426 U.S. 128, 138 (1976).

ii. The reserved right may not be limited by resort to competing equities in existing uses. Winters v. United States, supra; Arizona v. California, supra; Cappaert, supra.

iii. The reserved right is created by federal law; it does not depend on state law or procedures for its existence.

Cappaert, supra at 145;

Arizona v. San Carlos Apache

Tribe of Arizona, ___ U.S.

___, 103 S.Ct. 3201, 77

L.Ed.2d 837 (1983).

- b. Reserved rights may be quantified judicially only in the context of a general adjudication in which all claimants to water are joined. 43 U.S.C. §666 (McCarran Amendment). Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe of Arizona, supra.

Under such circumstances the interest of state officials in quantifying reserved rights is likely to be tempered by the political and financial costs of involving the non-Indian water using community in an adjudication. E.g. In Re the

General Adjudication of All Rights to Use Water and Water Rights on the Missouri River System, State of South Dakota, Civ. No. 80-100 (Cir. Ct. 6th Jud. Cir. Oct. 5, 1983) (order granting South Dakota's motion to dismiss, without prejudice).

II. CURRENT POLICY ON NEGOTIATION

A. Federal

1. On July 14, 1982, former Secretary James G. Watt announced the formation in the Department of the Interior of a Water Policy Advisory Group in order to pursue negotiated settlements of Indian reserved water rights. The Policy Advisory Group is chaired by the Solicitor and includes all assistant secretaries and bureau directors whose programs are affected by Indian reserved water rights. The Policy Advisory Group is intended to assure timely and informed involvement by policy officials in the negotiation process.

2. See also Veto of H.R. 5118, Message from the President of the United States, H.R. Doc. No. 97-191, 97th Cong., 2d Sess. June 2, 1982. Attachment A. As the reason for his veto of the "Southern Arizona Water Rights Settlement Act of 1982," President Reagan cited the absence of the United States from the negotiations and the lack of any provision for sharing the substantial cost of the settlement. In subsequent negotiations those defects were cured and the settlement was enacted as P.L. 97-293 Title III, Act of October 12, 1982.

B. State

1. Most states have approached negotiations informally as cases arise. Two Arizona settlements are examples:

a. P.L. 95-328 (Ak-Chin) Attachment B.

b. P.L. 97-293 (Papago) Attachment C.

2. Montana has enacted a procedure for negotiating reserved water rights. A Reserved Water Rights Compact Commission was created by Mont. Code Ann. §2-15-212 (1983). Negotiating procedures are set forth in Mont. Code Ann. §85-2-701 through 704 (1983).

C. Tribal

Indian tribes have acted individually and in concert with other tribes and non-Indians to pursue negotiations.

1. "Joint Resolution, Water Issues," Inter-Tribal Council of Nevada, the Tribes of Utah, the Navajo Tribe, Resolution No. 84-03, March 15, 1983. Attachment D.
2. Letter from Ralph F. Cox to Hon. William P. Clark (March 27, 1984) (discussing meeting on negotiations with Secretary

Clark and representatives of the Western Governors Association, Western Regional Council, National Congress of American Indians, Council on Energy Resources Tribes and the Native American Rights Fund). Attachment E.

III. DECIDING TO NEGOTIATE

A. Motive

Reasons for undertaking to negotiate a settlement of reserved water rights are numerous. They can shape the course of negotiations even before the parties begin to talk. Some examples follow:

1. Quantify and limit Indian reserved rights
2. Modernize and complete state water rights records of all water users

3. Promote water project development
4. Distract from litigation preparation
5. Avoid litigation in state or federal forum

B. The context of the decision to negotiate can reveal much about the motivation for doing so

1. Status of water rights adjudication in an affected basin
 - a. The absence of impending litigation ordinarily might be considered a disincentive to investing the time and resources required to accomplish a negotiated quantification. This factor is particularly significant to the federal government when it is understood that the resources allocated by the government to negotiations westwide are limited and generally are required to be used first in situations where litigation is pending and conflicts cannot be forestalled.

In the alternative, parties might conclude that the benefits of negotiating where no rights or interests are immediately at risk could produce an amicable and constructive settlement. The State of Oregon and the Confederated Tribes of the Warm Springs Reservation, and the State of North Dakota and the Three Affiliated Tribes of the Fort Berthold Reservation have begun to discuss negotiations in this context.

b. Parties may perceive that an impending adjudication could result in serious disruption in existing patterns of water use and resort to negotiation instead. This was the context in which the Ak-Chin settlement was enacted. That settlement is discussed briefly at section VI, infra.

c. While an adjudication is pending, parties may learn more clearly the relative strength or weakness of

their legal positions, and some, particularly governmental entities may find the political costs of litigation unattractive, and elect to negotiate. The Papago settlement in Arizona was not enacted until seven years after litigation began. See section VI, infra.

- d. Even when an adjudication has been completed, negotiation may be advantageous.
 - i. After the issuance of findings of fact conclusions of law and a decree in an adjudication, one might expect the winners and losers to be clearly identified and, further, that the winners would have no incentive to negotiate with the losers. However, the complexity of an adjudication and the fact that appeals of

evolving legal issues lie ahead may counsel against the parties remaining intransigent. For example after a trial that cost the parties well over \$10 million, the State of Wyoming and the Shoshone and Arapaho Tribes of the Wind River Reservation have undertaken to negotiate a settlement. See section VI, infra.

- ii. Decisions of the United States Supreme Court in water rights cases generally have not been dispositive of all issues affecting water use and water rights. The Supreme Court's 1983 decision in Arizona v. California, supra, is perceived by many as foreclosing additional claims to water from the Colorado River on behalf of several Indian tribes. Yet the court

specifically left intact certain claims to water for lands subject only to further proceedings to determine whether the lands in question did in fact lie within the affected reservations.

Similarly, the recent decision in Nevada v. United States, ___ U.S. ___, (103 S. Ct. 2906, 77 Law Ed 2nd 509 (1983)), did not dispose of numerous pending judicial and administrative issues regarding water use in the Truckee and Carson River systems in Nevada.

2. The nature and extent of the water supply available to the parties is, of course, a principal consideration in negotiations.

a. Surplus, e.g., some portions of the Missouri River Basin

b. Fully appropriated, e.g. certain
drainages in New Mexico

i. Surplus if management in water
use is improved, e.g. Lower
Colorado River.

IV. NEGOTIATING PROCESS

A. Establish that there is an initiative to
negotiate.

1. Federal, State, or Tribal governmental
authority:

a. Establishes procedures and actively
solicits negotiation

b. Reacts to initiative for settlement
by water users.

B. Identify negotiators. Since water rights
generally are vested in the individual user,
state officials do not have the authority to
make agreements that encumber existing water

rights. At the same time it may not be feasible or necessary to have all interests at the negotiating table.

1. Identify parties who are indispensable to the negotiating process both legally and politically.

2. Potential Parties

- a. Federal

- i. Department of the Interior
(Bureau of Indian Affairs, Bureau of Reclamation, Fish and Wildlife Service, Bureau of Land Management, Office of Policy, Budget and Administration)

- ii. Department of Agriculture
(Forest Service)

- iii. Army Corps of Engineers,
(responsible for construction, flood control and navigation)

iv. Department of Energy
(hydropower)

v. Office of Management and Budget

b. State

i. Governor and Attorney General
(in some cases not of the same
political party or separately
elected)

ii. State Engineer

iii. Natural Resources Director

iv. Private irrigation interests

v. Municipal and Industrial water
users

vi. Individual water users

c. Indian Tribes

i. Tribe

ii. Allottees (Indians owning
individual trust allotments)

iii. Indian fee landowners

iv. Non-Indian successors to
allotments who claim reserved
water rights

d. National constituencies

i. Environmental groups

ii. Pro and anti Indian groups

3. Negotiating authority of representatives must be established. Positions taken in negotiations have to be cleared and approved as negotiations proceed. Failure of negotiators to keep principals informed and committed can defeat negotiations. E.g. State representatives in Fort Peck

negotiations in Montana were directed by their principles to withdraw commitments made in negotiations. Efforts are now underway to reestablish a negotiating framework.

4. Adopt an agenda and set goals

a. Establish negotiating principles, for example:

- i. Provide for protection of all existing Indian and non-Indian water uses
- ii. Outline elements of cost sharing
- iii. Recent settlements have provided for their enforcement through damages remedies (P.L. 95-328, Ak-Chin; P.L. 97-293, Papago). Identify who bears the risk and how it will be shared.

b. Set timetables for negotiating that account for legislative calendars and the willingness of courts to suspend adjudication deadlines so that negotiations can proceed.

c. Decide on the form of the settlement:

i. Consent decrees

ii. State legislative confirmation

iii. Congressional confirmation.

This is of particular importance where rights are being waived or limited, or provisions for conveying reserved water rights have been proposed because congressional approval for such provisions appears to be required by the Indian Non-Intercourse Act, 25 U.S.C. §177. In addition, congressional authority will be required to secure any

appropriations or other
Federal resources required to
implement the settlement.

V. IMPLEMENTING SETTLEMENTS

Once a settlement is adopted, its success will be measured by the benefits it actually produces for the parties. Those benefits will be realized only if the settlement is well-founded in the first place.

- A. Appropriations committees as well as budget officials in the executive branch of the Federal Government have to remain convinced of the feasibility of the settlement.
- B. Environmental clearances have to be secured in a timely manner where new development is contemplated.
- C. State, Federal and Tribal officials need to cooperate in the governmental aspects of water rights administration in the context of settlement provisions.

VI. SYNOPSES OF SELECTED CASE HISTORIES

Set forth below is a brief discussion of five cases in which Indian tribes undertook to negotiate for recognition, protection, and development of their reserved water rights. They reveal how diligently the settlement process must be pursued by all parties if any real benefit is to accrue from it.

- A. Ute Indian Tribe of the Uintah and Ouray Indian Reservation, Utah. On September 20, 1965, the Ute Indian Tribe entered into what has become known as the Ute Deferral Agreement. Attachment F. In that agreement the Ute Indians agreed with the Bureau of Reclamation, the Bureau of Indian Affairs and the Central Utah Water Conservancy District that the Indians would agree to defer development of 15,242 acres of land in order to facilitate the development of the Central Utah Project. In consideration for that deferral the Indians anticipated receiving a number of benefits including fish, wildlife and recreation facilities, and construction of water supply and irrigation facilities to replace water that would be diverted away from the Indians' lands

to serve other non-Indian beneficiaries of the Central Utah Project. The agreement also was intended to quantify the Indians' reserved water rights. The State of Utah has ratified the provisions of the deferral agreement, including the quantification of the tribe's water rights, through state legislation enacted in 1980. Utah Code Ann. §73-21-1 (1980). Neither the tribe nor the United States Congress has enacted legislation approving the deferral agreement.

In the years since the deferral agreement was executed the costs of implementing the Central Utah Project have increased dramatically and the feasibility of some of its components, including those that were intended to serve the Indian lands has been called into question. At the same time portions of the CUP that are designed to serve non-Indian water users have been constructed or are under construction.

The Indians now question the underlying legal authority for the deferral agreement and no longer are as confident that they will receive any of the benefits that were intended for them

in the deferral agreement. Nonetheless, the tribe is determined to proceed to implement the spirit of the agreement provided that the Department of the Interior and the non-Indian water using community in the State of Utah will provide assurances that the Indians will receive the benefit of their bargain. The tribe is now working with officials in the Department to employ the Water Policy Advisory Group to assist in the negotiation of a fair settlement of the issues raised by the deferral agreement and its implementation to date.

B. Ak-Chin Indian Community, Arizona

The Act of July 28, 1978 (P.L. 95-328) provides for the settlement of the Ak-Chin Indian Community's claims to water in central Arizona. In the settlement Congress directs the Secretary to provide a water supply to meet the emergency needs of the Indians by constructing a well field and water delivery system on federal lands near the Ak-Chin reservation. The act also requires the Secretary to provide, as soon as possible, but no later than 2003, a

permanent annual water supply of 85,000 acre feet of water suitable for irrigation on the reservation.

In exchange for the development and delivery of the emergency and permanent water supplies to the Ak-Chin reservation, the Indian community agrees to waive any claims to water or damages to their water rights against the United States, the State of Arizona and any water users in the state. The sole remedy available to the Ak-Chin Indian Community under the 1978 Act to enforce delivery of the water provided for in the settlement is a damages claim against the United States. Damages are to be measured by the replacement cost of any water not delivered by the United States.

The state and non-Indian water users in central Arizona are not subject to liability if water is not delivered as required by the act. The act makes no provision for cost sharing; the United States is responsible entirely for the implementation of the settlement.

At the time Congress was deliberating whether to enact the Ak-Chin settlement, the Department of the Interior informed the appropriate committees of its concern that water sources had not been identified to meet the proposed water delivery obligations to Ak-Chin and that the cost associated with acquisition and delivery of such a supply would be substantial. As the initial water delivery deadline, January 1984, approached, the Department and the Indians negotiated an agreement-in-principal (Attachment G) which was designed to adjust the delivery schedule and provide compensation to the Community in anticipation of the inability of the United States to meet the statutory water delivery deadlines. Implementation of the agreement-in-principle will require cooperation by the Ak-Chin Indian Community, state officials, the Arizona congressional delegation, and non-Indian water users in Arizona.

C. Papago Tribe, Arizona

The Act of October 12, 1982 (P.L. 97-293 Title III) provided for settlement of claims to water for the San Xavier District of the Papago Reservation in the vicinity of Tucson, Arizona and certain other claims to water for portions of the Sells Papago Reservation in southern Arizona. Settlement came seven years after the United States and the Papago Tribe filed suit against the City of Tucson, the State of Arizona, and major agricultural and industrial water users to quantify reserved water rights claims in the declining aquifers of the upper Santa Cruz River Basin.

The settlement was initially vetoed by President Reagan because the Federal Government had not participated in the settlement negotiations and the entire cost of the settlement was made an obligation of the United States. In subsequent negotiations with federal officials a cost sharing provision was negotiated with the state and the principal non-Indian water users. The settlement is similar to the one for Ak-Chin in that it

requires that a water supply be acquired and delivered to the Indians by a date certain in exchange for a waiver and relinquishment of all of the claims by the Papagos to water for the affected reservation lands. Failure to deliver water will result in liability by the United States for damages measured by the replacement cost of water not delivered. Completion of Central Arizona Project delivery facilities to the San Xavier Papago Reservation is integral to successful implementation of the settlement. As required by the settlement, implementing agreements among various parties have been executed and cost sharing contributions have been either made or pledged by the parties.

- D. Assiniboine and Sioux Tribes of the Fort Peck Reservation, Montana. Pursuant to the Montana Water Use Act the Fort Peck Tribes, the United States and the State of Montana undertook to negotiate a quantification of the Tribes' reserved water rights in lieu of an adjudication. The State was motivated by concern that many non-Indian water users risked being displaced in an adjudication by senior reserved water rights claims on behalf of the Indians.

The Indians saw an opportunity to obtain benefits regarding water use and administration that were not as readily achievable in the context of an adjudication.

Essential provisions in the Compact negotiations that occurred over several months in 1982 and 1983 included the protection of all existing uses of water by Indians and non-Indians, water marketing authority in the Fort Peck Tribes, quantification of a reserved right for the Tribes out of the Missouri River which forms the southern boundary of the Fort Peck Reservation, and a plan for shared administrative authority over water use on the reservation.

All of the negotiators were presumed to have the authority to act on behalf of respective executives of the state, federal and tribal governments. A compact acceptable to those entities was to be submitted for ratification by the tribal council, state legislature, and the United States Congress. In the spring of 1983, the negotiators for the State of Montana informed the Tribes and the United States that

State officials would not support agreements that had been reached among the negotiators. Because all negotiators had adopted a procedure for clearing agreements on each issue as it arose, this news meant that introduction of the compact for approval by the state legislature could not occur before its adjournment until the 1985 session. Negotiations then broke off, though recently the State has contacted the Fort Peck Tribes to request that negotiations resume.

- E. Shoshone and Arapaho Tribes of the Wind River Reservation, Wyoming. In 1977 the State of Wyoming enacted legislation that was intended to permit the adjudication of the reserved water rights of the Wind River Reservation and other federal reserved rights in Wyoming, and to provide for improved administration of water rights arising under state law. Wyo. Stat. §1-37-106. Litigation pursuant to that act has almost exclusively been addressed to the nature and extent of the reserved water rights of the Wind River Reservation.

The State adopted a litigation strategy that had as a premise that there are no federal reserved water rights in Wyoming. That strategy resulted in an extremely costly and protracted adjudication that is as yet incomplete at the trial level.

A Special Master appointed to hear the case issued a report on December 15, 1982. Thereafter on May 10, 1983, following a hearing on exceptions to the Master's Report, the District Court issued a decision and decree. Motions for reconsideration were timely filed, heard, and are awaiting disposition.

The State and the Tribes have agreed to attempt to negotiate a settlement while the state district court still has jurisdiction so that further litigation in the Wyoming Supreme Court may be forestalled. Neither party has won a clear victory in the decision of the district court to date. The State and the Tribes have set a deadline of November 1984 to decide whether negotiations are productive.

ATTACHMENTS

- A. Veto of H.R. 5118 (Papago).
- B. P.L. 95-328 (Ak-Chin Settlement)
- C. P.L. 97-293 Title III (Southern Arizona Water Rights Settlement Act of 1982 (Papago))
- D. Inter-Tribal Council of Arizona
- E. Western Regional Council
- F. Ute Deferral Agreement
- G. Agreement-in-Principle (Ak-Chin)

ATTACHMENT A

VETO OF H.R. 5118

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

HIS VETO MESSAGE ON H.R. 5118, THE PROPOSED "SOUTHERN
ARIZONA WATER RIGHTS SETTLEMENT ACT OF 1982"



JUNE 2, 1982.—Message and accompanying papers
ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

80-011 O

WASHINGTON: 1982

To the House of Representatives:

I return herewith, without my approval, H.R. 5118, the proposed "Southern Arizona Water Rights Settlement Act of 1982." I take this action with sincere disappointment. I am well aware of the hard work of the Arizona Congressional leaders that went into the development and passage of this legislation. I also understand their desire to resolve the litigation that has hung over the head of the City of Tucson and the many private parties involved for the past seven years.

I strongly believe that the most appropriate means of resolving Indian water rights disputes is through negotiated settlement and legislation if it is needed to implement any such settlement. However, H.R. 5118 is a negotiated settlement with a serious flaw. The United States Government was never a party to the negotiations that led to the development of this proposal. This settlement was negotiated among the Tribe, the City of Tucson, the State of Arizona, the affected commercial interests and other defendants with assistance from the Arizona Congressional delegation. The result of this negotiation was that the United States Government, which was absent from the negotiation table, would bear almost the entire financial burden of the settlement at a potential initial cost of \$112 million and a potential annual cost of approximately \$5 million.

I cannot support this resolution of litigation on behalf of the Papago Tribe by the United States Government. I can only in good conscience approve legislation intended to implement a settlement if the United States has been a major party in the negotiations and if the contribution by the defendants in the litigation involved is significant.

I pledge the full cooperation of my Administration to the States and local governments that are facing the difficult task of equitably resolving Indian water rights suits. I cannot, however, pledge the Federal Treasury as a panacea for this problem.

H.R. 5118 is a multi-million dollar bailout of local public and commercial interests at the expense of Federal taxpayers throughout the nation. It is a prime example of serious misuse of Federal funds. It asks the Federal Government to pay the settlement share of the mining companies and other local water users whose share should more properly be borne by the defendants themselves.

I therefore must return this legislation to you without my approval. I will only approve legislation that implements a true negotiated settlement. Such a settlement is one in which all parties that are making contributions or concessions have agreed to those contributions or concessions at the negotiating table. I look forward to receiving such legislation from the Congress. I am asking the Secretary of the Interior to coordinate participation by my Administration in any such negotiations.

RONALD REAGAN.

THE WHITE HOUSE, June 1, 1982.

ATTACHMENT B

PUBLIC LAW 95-328—JULY 28, 1978

92 STAT. 409

Public Law 95-328
95th Congress

An Act

Relating to the settlement between the United States and the Ak-Chin Indian community of certain water right claims of such community against the United States.

July 28, 1978
[S. 1582]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress hereby declares that it is the policy of Congress to resolve, without costly and lengthy litigation, the claims of the Ak-Chin Indian community for water based upon failure of the United States to meet its trust responsibility to the Indian people provided reasonable settlement can be reached.

Ak-Chin Indians,
water right
claims.

(b) The Congress hereby finds and declares that—

(1) the Ak-Chin Indian community relies for its economic sustenance on farming, and that ground water, necessary thereto, is declining at a rate which will make it uneconomical to farm within the next few years;

(2) at the time of the settlement of the reservation, it was the obligation and intention of the United States to provide water to the Ak-Chin Indian Reservation, and such obligation remains unfulfilled;

(3) it is likely that the United States would be held liable for its failure to provide water and for allowing ground water beneath the reservation to be mined;

(4) there exists a critical situation at Ak-Chin in that there is not sufficient economically recoverable ground water beneath the reservation to sustain a farming operation until a permanent source of water suitable for irrigation on the reservation can be delivered;

(5) this Act is proposed to settle the Ak-Chin Indian community's claim for water by meeting the emergency needs of the Ak-Chin community through construction of a well field and water delivery system from nearby Federal lands and by obligating the United States to meet the Ak-Chin community's needs for a permanent supply of water in a fixed amount to be available upon a date certain, in exchange for a release of all claims such community has against the United States for failing to act consistently with its trust responsibility to protect and deliver the water resources of the community; and

(6) it is the intention of this Act not to discriminate against any non-Indian landowners or other persons, but to fulfill the historic and legal obligation of the United States toward the Ak-Chin Indian community.

SEC. 2. (a) For the purposes of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall undertake engineering and hydrological studies as may be necessary to determine whether there exists, on Federal lands near the Ak-Chin Indian Reservation, a source of ground water which could be taken, on an annual basis, for use in connection with any contract entered into pursuant to subsection (b) of this section, subject to the provisions in (c) (2).

Studies.

Report to
Congress.

Such studies shall be completed and a report with respect thereto submitted to the Congress within twelve months after the date of the enactment of this Act.

Contracts.

(b) Within one hundred and eighty days following the submission to the Congress of the report referred to in subsection (a), the Secretary, if he determines that there exists a source of ground water which can be so taken on an annual basis, shall enter into a contract or other agreement with the Ak-Chin Indian community pursuant to which the Secretary shall agree, on behalf of the United States, to—

(1) furnish, subject to the provisions of clause (2) of subsection (c) of this section, to the Ak-Chin Indian community, commencing within sixty days following the completion of the necessary facilities under clause (2) of this subsection but in no event later than four years from the date of said contract, the delivery to the southeast corner of the lands comprising the Ak-Chin Indian Reservation, on an annual basis, of eighty-five thousand acre-feet of ground water from nearby Federal lands covered by such studies;

(2) take such action as may be necessary to begin within sixty days following the date of such contract, to drill, construct, equip, maintain, repair, reconstruct, and operate a well field on such Federal lands, and to construct and maintain a delivery system, including canals, pumping stations and other appurtenant works, sufficient to provide for the delivery of such ground water from such Federal lands to the southeast corner of the lands comprising the Ak-Chin Indian Reservation.

(c)(1) The delivery of ground water under clause (1) of subsection (b) shall continue until augmented or replaced by the permanent water supply required under section 3 to be delivered to the Ak-Chin Indian Reservation, except that the obligation to deliver ground water during any year shall be reduced for that year by an amount equal to the amount of surface water delivered to such community pursuant to such contract during such year.

(2) Notwithstanding the provisions of clause (1) of subsection (b) of this section, the Secretary, if he determines that pumping eighty-five thousand acre-feet of ground water annually from nearby Federal lands to the Ak-Chin community would (A) not be hydrologically feasible or (B) diminish the ground water supply in the basin and thereby cause severe damage to other water users; may deliver a lesser amount.

(d) The Secretary is authorized to receive and consider any claims arising under this Act from water users other than the Ak-Chin Indian community for compensation for any losses or other expenses incurred by such users by reason of the enactment of this Act or actions taken thereunder.

Plan, report to
Congress.

(e) Notwithstanding any other provision of this Act, if the Secretary determines on the basis of studies conducted pursuant to subsection (a) of this section, that the pumping on an annual basis of any such ground water pursuant to clause (1) of subsection (b) of this section in excess of sixty thousand acre-feet is not possible by reason of clause (2) of subsection (c), and the Ak-Chin Indian community does not agree to contract for a lesser amount, the Secretary shall report to the Congress an alternative plan for meeting the emergency needs of the Ak-Chin Indian community. Such alternative plan shall be submitted to the Congress within one hundred and eighty days following the submission of the report referred to in subsection (a).

SEC. 3. In addition, and as a part of the contract referred to in section 2(b) of this Act, the Secretary shall provide for, commencing as soon as possible, but in no event later than the expiration of the twenty-five-year period following the date of the enactment of this Act, the permanent delivery, on an annual basis, to the lands comprising the Ak-Chin Indian Reservation, of eighty-five thousand acre-feet of water suitable for irrigation on the reservation.

SEC. 4. (a) As consideration on the part of the Ak-Chin Indian community for entering into any contract or agreement pursuant to section 2(b), the Ak-Chin Indian community shall agree to waive, in a manner satisfactory to the Secretary, any and all claims of water rights or injuries to water rights of the Ak-Chin Indian community, including both ground water and surface water from time immemorial to the present, which it might have against the United States, the State of Arizona or agency thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

Waivers.

(b) As further consideration on the part of the Ak-Chin Indian community for entering into any contract or other agreement pursuant to section 2(b), the Ak-Chin Indian community shall agree to waive any and all claims of water rights or injuries to water rights, including both ground water and surface water, arising under the laws of the United States or the State of Arizona, which it might have in the future against any person, corporation, municipal corporation, or the State of Arizona or agency thereof.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the community will not thereby waive any claims against the United States for breach, if any, of the contract referred to in section 2(b) of this Act. A failure to deliver water within the times specified in either section 2(b) or 3 shall be deemed a breach of the contract. The measure of damages for any such breach shall be the replacement cost of water not delivered by the United States.

Breach of
contract.
Damages.

SEC. 5. There are authorized to be appropriated for the fiscal year ending September 30, 1979, the sum of \$500,000, and the aggregate sum of \$42,500,000 to be appropriated prior to the fiscal year ending September 30, 1983, for carrying out the purposes of section 2 of this Act. Notwithstanding any other provisions of this Act, no authorization to make payments under this Act, or to enter into contracts, shall be effective except to such extent or in such amounts as are provided in advance in appropriations Acts.

Appropriation
authorization.

Approved July 28, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-954 accompanying H.R. 8099 (Comm. on Interior and Insular Affairs).

SENATE REPORT No. 95-460 (Comm. on Indian Affairs).

CONGRESSIONAL RECORD:

Vol. 123 (1977): Oct. 11, considered and passed Senate.

Vol. 124 (1978): May 2, H.R. 8099 considered and failed of passage in House.

June 29, H.R. 8099 considered and passed House; proceedings vacated and S. 1582, amended, passed in lieu.

July 13, Senate concurred in House amendment.

ATTACHMENT C

Southern
Arizona
Water Rights
Settlement
Act of 1982.

Papago Tribe,
water rights
claims.

TITLE III

CONGRESSIONAL FINDINGS

SEC. 301. The Congress finds that—

(1) water rights claims of the Papago Tribe with respect to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation are the subject of existing and prospective lawsuits against numerous parties in southern Arizona, including major mining companies, agricultural interests, and the city of Tucson;

(2) these lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;

(3) the parties to the lawsuits and others interested in the settlement of the water rights claims of the Papago Indians within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area have diligently attempted to settle these claims and the Federal Government, by providing the assistance specified in this title, will make possible the execution and implementation of a permanent settlement agreement;

(4) it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of southern Arizona that the United States Government assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and

(5) the settlement contained in this title will—

(A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and

(B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe.

DEFINITIONS

SEC. 302. For purposes of this title—

(1) The term "acre-foot" means the amount of water necessary to cover one acre of land to a depth of one foot.

(2) The term "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.).

(3) The term "Papago Tribe" means the Papago Tribe of Arizona organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "subjugate" means to prepare land for the growing of crops through irrigation.

(6) The term "Tucson Active Management Area" means the area of land corresponding to the area initially designated as the Tucson Active Management Area pursuant to the Arizona Groundwater Management Act of 1980, laws 1980, fourth special session, chapter 1.

(7) The term "December 11, 1980, agreement" means the Central Arizona Project water delivery contract between the United States and the Papago Tribe.

(8) The term "replacement costs" means the reasonable costs of acquiring and delivering water from sources within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area. Such costs shall include costs of necessary construction amortized in accordance with standard Bureau of Reclamation Procedures.

(9) The term "value" means the value attributed to the water based on the Tribe's anticipated or actual use of the water, or its fair market value, whichever is greater.

WATER DELIVERIES TO TRIBE FROM CAP; MANAGEMENT PLAN; REPORT ON WATER AVAILABILITY; CONTRACT WITH TRIBE

SEC. 303. (a) As soon as is possible but not later than ten years after the enactment of this title, if the Papago Tribe has agreed to the conditions set forth in section 306, the Secretary, acting through the Bureau of Reclamation, shall—

(1) in the case of the San Xavier Reservation—

(A) deliver annually from the main project works of the Central Arizona Project twenty-seven thousand acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) improve and extend the existing irrigation system on the San Xavier Reservation and design and construct within the reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

(2) in the case of the Schuk Toak District of the Sells Papago Reservation—

(A) deliver annually from the main project works of the Central Arizona Project ten thousand eight hundred acre-feet of water suitable for agricultural use to the reservation in accordance with the provisions of section 304(a); and

(B) design and construct an irrigation system in the Eastern Schuk Toak District of the Sells Papago Reservation, including such canals, laterals, farm ditches, and irrigation works, as are necessary for the efficient distribution for agricultural purposes of the water referred to in subparagraph (A); and

Water management plan, establishment.

(3) establish a water management plan for the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation which, except as is necessary to be consistent with the provisions of this title, will have the same effect as any management plan developed under Arizona law.

Appropriation authorization.

(4) There are authorized to be appropriated up to \$3,500,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indices applicable to the type of construction involved for those features of the irrigation system described in paragraph (1)(B) or (2)(B) of section 303(a) which are not authorized to be constructed under any other provision of law.

Study.

(b)(1) In order to encourage the Papago Tribe to develop sources of water on the Sells Papago Reservation, the Secretary shall, if so requested by the tribe, carry out a study to determine the availability and suitability of water resources within the Sells Papago Reservation but outside the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area.

Study.

(2) The Secretary shall, in cooperation with the Secretary of Energy, or, with the appropriate agency or officials, carry out a study to determine—

(A) the availability of energy and the energy requirements which result from the enactment of the provisions of this title, and

(B) the feasibility of constructing a solar power plant or other alternative energy producing facility to meet such requirements.

(c) The Papago Tribe shall have the right to withdraw ground water from beneath the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation subject to the limitations of section 306(a).

(d) Nothing contained in this title shall diminish or abrogate any obligations of the Secretary to the Papago Tribe under the December 11, 1980, agreement.

(e) Nothing contained in sections 303(c) and 306(c) shall be construed to establish whether or not the Federal reserved rights doctrine applies, or does not apply, to ground water.

DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES; OPERATION AND MAINTENANCE

SEC. 304. (a) The water delivered from the main project works of the Central Arizona Project to the San Xavier Reservation and to the Schuk Toak District of the Sells Papago Reservation as provided

in section 303(a), shall be delivered in such amounts, and according to such terms and conditions, as are set forth in the December 11, 1980, agreement, except as otherwise provided under this section.

(b) Where the Secretary, pursuant to the terms and conditions of the agreement referred to in subsection (a), is unable, during any year, to deliver from the main project works of the Central Arizona Project any portion of the full amount of water specified in section 303(a)(1)(A) and section 303(a)(2)(A), the Secretary shall acquire and deliver an equivalent quantity of water from the following sources or any combination thereof:

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within that area in the State of Arizona:

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands or interests referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(c) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section or paragraphs (1)(A) and (2)(A) of section 303(a), he shall pay damages in an amount equal to—

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where the delivery system is completed.

(d) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (b) without the consent of the owner thereof. No private lands may be acquired under subsection (b)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water right the use of which is recognized by State law. In acquiring any private lands under subsection (b)(3)(A), the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

(e)(1) To meet the obligation referred to in paragraphs (1)(A) and (2)(A) of section 303(a), the Secretary shall, acting through the Bureau of Reclamation, as part of the main project works of the Central Arizona Project—

(A) design, construct and, without cost to the Papago Tribe, operate, maintain, and replace such facilities as are appropriate including any aqueduct and appurtenant pumping facilities, powerplants, and electric power transmission facilities which may be necessary for such purposes; and

(B) deliver the water to the southern boundary of the San Xavier Reservation, and to the boundary of the Schuk Toak District of the Sells Papago Reservation, at points agreed to by the Secretary and the tribe which are suitable for delivery to the reservation distribution systems.

• Appropriation
authorization.

(2) There is hereby authorized to be appropriated by this title in addition to other sums authorized to be appropriated by this title, a sum equal to that portion of the total costs of phase B of the Tucson Aqueduct of the Central Arizona Project which the Secretary determines to be properly allocable to construction of facilities for the delivery of water to Indian lands as described in subparagraphs (A) and (B) of paragraph (1). Sums allocable to the construction of such facilities shall be reimbursable as provided by the Act of July 1, 1932 (Public Law 72-240; 25 U.S.C. 386(a)), as long as such water is used for irrigation of Indian lands.

25 USC 386a.

(f) To facilitate the delivery of water to the San Xavier and the Schuk Toak District of the Sells Papago Reservation under this title, the Secretary is authorized—

(1) to enter into contracts or agreements for the exchange of water, or for the use of aqueducts, canals, conduits, and other facilities for water delivery, including pumping plants, with the State of Arizona or any of its subdivisions, with any irrigation district or project, or with any authority, corporation, partnership, individual, or other legal entity; and

(2) to use facilities constructed in whole or in part with Federal funds.

RECLAIMED WATER; ALTERNATIVE WATER SUPPLIES

SEC. 305. (a) As soon as possible, but not later than ten years after the date of enactment of this title, the Secretary shall acquire reclaimed water in accordance with the agreement described in section 307(a)(1) and deliver annually twenty-three thousand acre-feet of water suitable for agricultural use to the San Xavier Reservation and deliver annually five thousand two hundred acre-feet of water suitable for agricultural use to the Schuk Toak District of the Sells Papago Reservation.

(b)(1) The obligation of the Secretary referred to in subsection (a) to deliver water suitable for agricultural use may be fulfilled by voluntary exchange of that reclaimed water for any other water suitable for agricultural use or by other means. To make available and deliver such water, the Secretary acting through the Bureau of Reclamation shall design, construct, operate, maintain, and replace such facilities as are appropriate. The costs of design, construction, operation, maintenance, and replacement of on-reservation systems for the distribution of the water referred to in subsection (a) are the responsibility of the Papago Tribe.

(2) The Secretary shall not construct a separate delivery system to deliver reclaimed water referred to in subsection (a) to the San Xavier Reservation and the Schuk Toak District of the Sells Papago Reservation.

(3) To facilitate the delivery of water under this title, the Secretary shall, to the extent possible, utilize unused capacity of the main project works of the Central Arizona Project without reallocation of costs.

(c) The Secretary may, as an alternative to, and in satisfaction of the obligation to deliver the quantities of water to be delivered under subsection (a), acquire and deliver pursuant to agreements authorized in section 307(b), an equivalent quantity of water from the following sources or any combination thereof—

(1) agricultural water from the Central Arizona Project which has been contracted for but has been released or will be unused by the contractor during the period in which the Secretary will acquire the water;

(2) any water available for delivery through the Central Arizona Project which exists by reason of the augmentation of the water supply available for use and distribution through the Central Arizona Project by subsequent Acts of Congress; and

(3) water from any of the following sources or any combination thereof within the Tucson Active Management Area in the State of Arizona and that part of the Upper Santa Cruz Basin not within that area—

(A) private lands or interests therein having rights in surface or ground water recognized under State law; or

(B) reclaimed water to which the seller has a specific right.

Deliveries of water from lands referred to in subparagraph (A) shall be made only to the extent such water may be transported within the Tucson Active Management Area pursuant to State law.

(d) If the Secretary is unable to acquire and deliver quantities of water adequate to fulfill his obligations under this section, he shall pay damages in an amount equal to—

Payment of
damages.

(1) the actual replacement costs of such quantities of water as are not acquired and delivered, where a delivery system has not been completed within ten years after the date of enactment of this title, or

(2) the value of such quantities of water as are not acquired and delivered, where a delivery system is completed.

(e) No land, water, water rights, contract rights, or reclaimed water may be acquired under subsection (c) without the consent of the owner thereof. No private lands may be acquired under subsection (c)(3)(A) unless the lands have a recent history of receiving or being capable of actually receiving all or substantially all of the water the right to the use of which is recognized by State law. In acquiring said private lands, the Secretary shall give preference to the acquisition of lands upon which water has actually been put to beneficial use in any one of the five years preceding the date of acquisition. Nothing in this section shall authorize the Secretary to acquire or disturb the water rights of any Indian tribe, band, group, or community.

LIMITATION ON PUMPING FACILITIES FOR WATER DELIVERIES;
DISPOSITION OF WATER

SEC. 306. (a) The Secretary shall be required to carry out his obligation under subsections (b), (c), and (e) of section 304 and under section 305 only if the Papago Tribe agrees to—

(1) limit pumping of ground water from beneath the San Xavier Reservation to not more than ten thousand acre-feet per year;

(2) limit the quantity of ground water pumped from beneath the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area to those quantities being withdrawn on January 1, 1981; and

(3) comply with the management plan established by the Secretary under section 303(a)(3).

Nothing contained in paragraph (1) shall restrict the tribe from drilling wells and withdrawing ground water therefrom on the San Xavier Reservation if such wells have a capacity of less than thirty-five gallons per minute and are used only for domestic and livestock purposes. Nothing contained in paragraph (2) shall restrict the tribe from drilling wells and withdrawing ground water therefrom in the eastern Schuk Toak District of the Sells Papago Reservation which lies within the Tucson Active Management Area if such wells have a capacity of less than thirty-five gallons per minute and which are used only for domestic and livestock purposes.

(b) The Secretary shall be required to carry out his obligations with respect to distribution systems under paragraphs (1)(B) and (2)(B) of section 303(a) only if the Papago Tribe agrees to—

(1) subjugate, at no cost to the United States, the land for which those distribution systems are to be planned, designed, and constructed by the Secretary; and

(2) assume responsibility, through the tribe or its members or an entity designated by the tribe, as appropriate, following completion of those distribution systems and upon delivery of water under this title, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (38 Stat. 583; 25 U.S.C. 385).

(c)(1) The Papago Tribe shall have the right to devote all water supplies under this title, whether delivered by the Secretary or pumped by the tribe, to any use, including but not limited to agricultural, municipal, industrial, commercial, mining, or recreational use whether within or outside the Papago Reservation so long as such use is within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within such area.

(2) The Papago Tribe may sell, exchange, or temporarily dispose of water, but the tribe may not permanently alienate any water right. In the event the tribe sells, exchanges, or temporarily disposes of water, such sale, exchange, or temporary disposition shall be pursuant to a contract which has been accepted and ratified by a resolution of the Papago Tribal Council and approved and executed by the Secretary as agent and trustee for the tribe. Such contract shall specifically provide that an action may be maintained by the contracting party against the United States and the Secretary for the breach thereof. The net proceeds from any sale, exchange, or disposition of water by the Papago Tribe shall be used for social or economic programs or for tribal administrative purposes which benefit the Papago Tribe.

(d) Nothing in section 306(c) shall be construed to establish whether or not reserved water may be put to use, or sold for use, off of any reservation to which reserved water rights attach.

**OBLIGATION OF THE SECRETARY; CONTRACT FOR RECLAIMED WATER;
DISMISSAL AND WAIVER OF CLAIMS OF PAPAGO TRIBE AND ALLOTTEES**

SEC. 307. (a) The Secretary shall be required to carry out his obligations under subsections (b), (c), and (e) of section 304 and under section 305 only if—

(1) within one year of the date of enactment of this title—

(A) the city of Tucson and the Secretary agree that the city will make immediately available, without payment to the city, such quantity of reclaimed water treated to secondary standards as is adequate, after evaporative losses, to deliver annually, as contemplated in section 305(a), twenty-eight thousand two hundred acre-feet of water for the Secretary to dispose of as he sees fit; such agreement may provide terms and conditions under which the Secretary may relinquish to the city of Tucson such quantities of water as are not needed to satisfy the Secretary's obligations under this title;

(B) the Secretary and the city of Tucson, the State of Arizona, the Anamax Mining Company, the Cyprus-Pima Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company agree that funds will be contributed, in accordance with the paragraphs (1)(B) and (2) of subsection (b) of section 313, to the Cooperative Fund established under subsection (a) of such section.

(C) the Papago Tribe agrees to file with the United States District Court for the District of Arizona a stipulation for voluntary dismissal with prejudice, in which the Attorney General is authorized and directed to join on behalf of the United States, and the allottee class representatives' petition for dismissal of the class action with prejudice in the United States, the Papago Indian Tribe, and others against the city of Tucson, and others, civil numbered 75-39 TUC (JAW); and

(D) the Papago Tribe executes a waiver and release in a manner satisfactory to the Secretary of—

Waiver and
release.

(i) any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from time immemorial to the date of the execution by the tribe of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona; and

(ii) any and all future claims of water rights (including water rights in both ground water and surface water) within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, from and after the date of execution of such waiver, which the Papago Tribe has against the United States, the State of Arizona and any agency or political subdivision thereof, or any other person, corporation,

or municipal corporation, under the laws of the United States or the State of Arizona; and

(2) the suit referred to in paragraph (1)(C) is finally dismissed;

(b) After the conditions referred to in subsection (a) have been met the Secretary shall be authorized and required, if necessary or desirable, to enter into agreements with other individuals or entities to acquire and deliver water from such sources set forth in section 305(c) if through such contracts as exercised in conjunction with the contract required in subsection (a)(1)(A) it is possible to deliver the quantities of water required in section 305(a).

(c) Nothing in this section shall be construed as a waiver or release by the Papago Tribe of any claim where such claim arises under this title.

Effective
date.

(d) The waiver and release referred to in this section shall not take effect until such time as the trust fund referred to in section 309 is in existence, the conditions set forth in subsection (a) have been met, and the full amount authorized to be appropriated to the trust fund under section 309 has been appropriated by the Congress.

(e) The settlement provided in this title shall be deemed to fully satisfy any and all claims of water rights or injuries to water rights (including water rights in both ground water and surface water) of all individual members of the Papago Tribe that have a legal interest in lands of the San Xavier Reservation and the Schuk Toak District of the Sells Reservation located within the Tucson Active Management Area and that part of the Upper Santa Cruz Basin not within said area, as of the date the waiver and release referred to in this section take effect. Any entitlement to water of any individual member of the Papago Tribe shall be satisfied out of the water resources provided in this title.

STUDY OF LANDS WITHIN THE GILA BEND RESERVATION; EXCHANGE OF LANDS AND ADDITION OF LANDS TO THE RESERVATION; AUTHORIZED APPROPRIATIONS

Studies and
analysis.

SEC. 308. (a) The Secretary is hereby authorized and directed to carry out such studies and analysis as he deems necessary to determine which lands, if any, within the Gila Bend Reservation have been rendered unsuitable for agriculture by reason of the operation of the Painted Rock Dam. Such study and analysis shall be completed within one year after the date of the enactment of this title.

(b) If, on the basis of the study and analysis conducted under subsection (a), the Secretary determines that lands have been rendered unsuitable for agriculture for the reasons set forth in subsection (a), and if the Papago Tribe consents, the Secretary is authorized to exchange such lands for an equivalent acreage of land under his jurisdiction which are within the Federal public domain and which, but for their suitability for agriculture, are of like quality.

(c) The lands exchanged under this section shall be held in trust for the Papago Tribe and shall be part of the Gila Bend Reservation for all purposes. Such lands shall be deemed to have been reserved as of the date of the reservation of the lands for which they are exchanged.

Management.

(d) Lands exchanged under this section which, prior to the exchange, were part of the Gila Bend Reservation, shall be managed

by the Secretary of the Interior through the Bureau of Land Management.

(e) The Secretary may require the Papago Tribe to reimburse the United States for moneys paid, if any, by the Federal Government for flood easements on lands which the Secretary replaces by exchange under subsection (b).

Reimbursement.

ESTABLISHMENT OF TRUST FUND; EXPENDITURES FROM FUND

SEC. 309. (a) Pursuant to appropriations the Secretary of the Treasury shall pay to the authorized governing body of the Papago Tribe the sum of \$15,000,000 to be held in trust for the benefit of such Tribe and invested in interest bearing deposits and securities including deposits and securities of the United States.

(b) The authorized governing body of the Papago Tribe, as trustee for such Tribe, may only spend each year the interest and dividends accruing on the sum held and invested pursuant to subsection (a). Such amount may only be used by the Papago Tribe for the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation which are not the obligation of the United States under this or any other Act of Congress.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 310. The functions of the Bureau of Reclamation under this title shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450) to the same extent as if performed by the Bureau of Indian Affairs.

EXTENSION OF STATUTE OF LIMITATIONS

SEC. 311. Except as otherwise provided in section 107 of this title, notwithstanding section 2415 of title 28, United States Code, any action relating to water rights of the Papago Indian Tribe or any member of such tribe brought by the United States for, or on behalf of, such tribe or member of such tribe, or by such tribe on its own behalf, shall not be barred if the complaint is filed prior to January 1, 1985.

ARID LAND RENEWABLE RESOURCE ASSISTANCE

SEC. 312. If a Federal entity is established to provide financial assistance to undertake arid land renewable resources projects and to encourage and assure investment in the development of domestic sources of arid land renewable resources, such entity shall give first priority to the needs of the Papago Tribe in providing such assistance. Such entity shall make available to the Papago Tribe—

- (1) price guarantees, loan guarantees, or purchase agreements,
- (2) loans, and
- (3) joint venture projects,

at a level to adequately cultivate a minimum number of acres as determined by such entity to be necessary to the economically successful cultivation of arid land crops and a level to contribute significantly to the economy of the Papago Tribe.

COOPERATIVE FUND

Establishment.

SEC. 313. (a) There is established in the Treasury of the United States a fund to be known as the "Cooperative Fund" for purposes of carrying out the obligations of the Secretary under sections 303, 304, and 305 of this title, including—

(A) operation, maintenance, and repair costs related to the delivery of water under sections 303, 304, 305;

(B) any costs of acquisition and delivery of water from alternative sources under section 304(b) and 305(c); and

(C) any damages payable by the Secretary under section 304(c) or 305(d) of this title.

(b)(1) The Cooperative Fund shall consist of—

(A) amounts appropriated to the Fund under paragraph (3) of this subsection;

(B) \$5,250,000 to be contributed as follows:

(i) \$2,750,000 (adjusted as provided in paragraph (2)) contributed by the State of Arizona;

(ii) \$1,500,000 (adjusted as provided in paragraph (2)) contributed by the City of Tucson; and

(iii) \$1,000,000 (adjusted as provided in paragraph (2)) contributed jointly by the Anamax Mining Company, the Cyprus-Pine Mining Company, the American Smelting and Refining Company, the Duval Corporation, and the Farmers Investment Company; and

(C) interest accruing to the Fund under subsection (a) which is not expended as provided in subsection (c).

(2) The amounts referred to in subparagraph (B) of paragraph (1) shall be contributed before the expiration of the three-year period beginning on the date of the enactment of this title. To the extent that any portion of such amounts is contributed after the one-year period beginning on the date of the enactment of this title, the contribution shall include an adjustment representing the additional interest which would have been earned by the Cooperative Fund if that portion had been contributed before the end of the one-year period.

Appropriation
authorization

(3) There are hereby authorized to be appropriated to the Cooperative Fund the following:

(A) \$5,250,000; and

(B) Such sums up to \$16,000,000 (adjusted as provided in paragraph 2) which the Secretary determines, by notice to the Congress, are necessary to meet his obligations under this title; and

(C) Such additional sums as may be provided by Act of Congress.

(c)(1) Only interest accruing to the Cooperative Fund may be expended and no such interest may be expended prior to the earlier of—

(A) 10 years after the date of the enactment of this title; or

(B) the date of completion of the main project works of the Central Arizona Project.

(2) Interest accruing to the Fund during the twelve-month period before the date determined under paragraph (1) and interest accruing to Fund thereafter shall, without further appropriation, be available for expenditure after the date determined under paragraph (1).

(d) The Secretary of the Treasury shall be the trustee of the Cooperative Fund. It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable for the needs of such Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

Trustee.
Investments.

(e) If, before the date three years after the date of the enactment of this title—

Termination.

(1) the waiver and release referred to in section 307 does not take effect by reason of section 307(d); or

(2) the suit referred to in section 307(a)(1)(C) is not finally dismissed

the Cooperative Fund under this section shall be terminated and the Secretary of the Treasury shall return all amounts contributed to the Fund (together with a ratable share of accrued interest) to the respective contributors. Upon such termination, the share contributed by the United States under subsection (b)(3) shall be deposited in the General Fund of the Treasury.

(f) Payments for damages arising under 304(c) and 305(d) shall not exceed in any given year the amounts available for expenditure in any given year from the Cooperative Fund established under this section.

COMPLIANCE WITH BUDGET ACT

SEC. 314. No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1982.

Effective
date.

SHORT TITLE

SEC. 315. This title may be cited as the "Southern Arizona Water Rights Settlement Act of 1982".

Approved October 12, 1982.

LEGISLATIVE HISTORY—S. 1409 (H. R. 5118):

HOUSE REPORTS: No. 97-422 accompanying H.R. 5118 (Comm. on Interior and Insular Affairs); No. 97-855 (Comm. of Conference).

SENATE REPORTS: No. 97-375 accompanying H.R. 5118 (Comm. on Indian Affairs); 97-420 (Comm. on Energy and Natural Resources); No. 97-568 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 128 (1982):

Mar. 4, H.R. 5118 considered and passed House.
May 11, H.R. 5118 considered and passed Senate, amended.
May 12, H.R. 5118 House concurred in Senate amendment with amendments.
May 13, Senate concurred in House amendments.
June 1, H.R. 5118 vetoed by President.
June 22, considered and passed Senate.
Aug. 17, considered and passed House, amended.
Aug. 20, Senate concurred in House amendments with amendments.
Sept. 24, Senate agreed to conference report.
Sept. 29, House agreed to conference report.

ATTACHMENT D



INTER TRIBAL COUNCIL of

ARIZONA

April 9, 1984

MEMBER TRIBES

AK-CHIN INDIAN COMMUNITY
CAMP VERDE YAVAPAI APACHE
INDIAN COMMUNITY
COCOPAH TRIBE
COLORADO RIVER INDIAN TRIBES
FORT McDOWELL YAVAPAI TRIBE
FORT MOHAVE TRIBE
GILA RIVER INDIAN COMMUNITY
HAVASUPAI TRIBE
HOPI TRIBE
HUALAPAI TRIBE
KAIBAB PAIUTE TRIBE
PAPAGO TRIBE
PASCUA YAOUI TRIBE
QUECHAN TRIBE
SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY
SAN CARLOS APACHE TRIBE
TONTON APACHE TRIBE
WHITE MOUNTAIN APACHE TRIBE
YAVAPAI PRESCOTT INDIAN TRIBE

Honorable William Clark
Secretary of Interior
Department of Interior
C St. Between 18th and 19th Sts., N.W.
Washington, D.C. 20510

Dear Secretary Clark:

The enclosed resolution on tribal water issues was officially adopted by the Inter Tribal Council of Arizona, the Inter Tribal Council of Nevada, the Tribes of Utah and representatives of the Navajo Tribe in a joint meeting on March 15, 1984.

Tribal water rights and projects are a top priority of southwestern tribes because of the fundamental importance of water in community development and increasing economic self-reliance.

We recommend that the Secretary of Interior strongly advocate for a higher level of funds for tribal water projects and tribal water rights activities based on tribal priorities. These priorities need to be assessed through discussions with tribal leaders as well as through the existing mechanisms in the Bureau of Indian Affairs and Bureau of Reclamation.

This resolution is also being sent to the Arizona congressional delegation, appropriate heads of committees, Kenneth Smith and Robert Broadbent. We appreciate your assistance in achieving the goals of this resolution.

Sincerely,

Ned Anderson

Ned Anderson, President
Inter Tribal Council of Arizona
Chairman, San Carlos Apache Tribe

Joint Resolution
Water Issues

84-03

The Inter Tribal Council of Arizona
The Inter Tribal Council of Nevada
The Tribes of Utah
The Navajo Tribe

- WHEREAS, the Secretary as the chief administrator of the Department of Interior has a trust responsibility and obligation to assist tribes to develop their water resources, and
- WHEREAS, water rights and the development of water resources are a top priority of Arizona, Nevada and Utah tribes, and
- WHEREAS, the development of water resources is essential for the continued progress of Indian people, communities and governments towards economic self-reliance, and
- WHEREAS, the Department of Interior, by its recent actions has unduly compromised Indian tribes' concerns and positions on their water rights and their water resources developments
- THEREFORE, BE IT RESOLVED, that the Secretary of Interior advocate for funds for FY 85 at a priority level for tribal water development projects as well as for water rights activities, both litigation and negotiation according to tribal priorities, and that these priorities be solicited through meetings with tribal leaders and through existing mechanisms in the Bureau of Indian Affairs, Bureau of Reclamation and other related agencies.

CERTIFICATION

The foregoing resolution was adopted at a duly called meeting of the Inter Tribal Council of Arizona, the Inter Tribal Council of Nevada, the Tribes of Utah, and the Navajo Tribe on March 15, 1984, where a quorum was present and the same unanimously passed.

ATTACHMENT E

Western Regional Council

March 27, 1984

BOARD OF TRUSTEES

Harry Blundell
Chairman of the Board
President and Chief
Executive Officer
Utah Power and Light
Company

Harry M. Conger
Vice-Chairman of the Board
President
Homestake Mining Company

Ralph F. Cox
Executive Vice President
Atlantic Richfield Company

J.D. Geist
Chairman and President
Public Service Company
of New Mexico

Joe L. Gremban
Chairman, President and
Chief Executive Officer
Sierra Pacific Power Company

William A. Griffith
President and
Chief Executive Officer
Hecla Mining Company

Thomas H. O'Leary
Vice-Chairman of the Board
Burlington Northern, Inc.

L. Merrill Rasmussen
President and
Chief Executive Officer
Husky Oil Company

Bruce M. Rockwell
Chairman of the Board
Colorado National Bank

W. P. Schmechel
President and
Chief Executive Officer
The Montana Power Company

H. Wilson Sundt
Chairman of the Board and
Chief Executive Officer
Sundt Corp.

The Honorable William P. Clark
Secretary of the Department of Interior
18th and C Streets, N.W.
Room 6151
Washington, D.C. 20240

Dear Mr. Secretary:

The Ad Hoc Working Group on Indian Reserved Water Rights representing the Western Governor's Association, Western Regional Council, National Congress of American Indians, Council on Energy Resource Tribes and Native American Rights Fund wishes to thank you and the members of your staff for meeting with us on March 7, 1984.

We believe that joint efforts can facilitate the consideration and implementation of consensual negotiated water settlements that will be in the best interests of all affected parties -- tribal, state and federal governments, as well as the private sector.

Briefly, and by way of review, we would like to emphasize the following points made by spokesmen from member organizations of the Ad Hoc Group during our meeting:

First: Efforts of the DOI/BIA in promoting negotiation of water claims must be strengthened and intensified if there is to be any expectation of extensive achievement in reaching negotiated settlements.

Second: It is unrealistic to anticipate commencement of negotiations in specific cases if a tribe lacks hydrologic or other data that is essential to the negotiation process. The DOI/BIA should pursue an internal assessment to determine what remains to be done in assessing tribal water needs, conducting hydrologic studies or obtaining other data, where necessary, for negotiations in specific cases.

Third: Commitments made by the Department to support specific tribal water projects or settlements must be honored.

1

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The Honorable William P. Clark
March 27, 1984
Page Two

Fourth: The federal government must provide a leadership role in seeking a timely solution to Indian water claims. This includes realistic appropriations within the BIA budget to support the foregoing described activities, as well as reasonable appropriations for tribal water projects that may become a part of negotiated settlements.

Fifth: The Ad Hoc Working Group and its member organizations are ready to cooperate and assist in the accomplishment of tasks that may be associated with the negotiated settlement of Indian water claims.

We were pleased, Mr. Secretary, to learn of the concern you expressed over this serious problem and of your commitment to seek a timely solution through the negotiation process. Your suggestion of an early follow-up meeting demonstrates your good faith in this regard. We will be in contact with your staff to arrange a mutually convenient date.

Respectfully,



Ralph F. Cox, Chairman
Indian Reserved Water Rights
ad hoc Committee

/vg

ATTACHMENT F

AGREEMENT

THIS AGREEMENT made and entered into this 20th day of September, 1965, pursuant to the Act of June 17, 1902, and acts amendatory thereof and supplementary thereto, and particularly the Act of April 11, 1956 (70 Stat. 105), by and between the United States of America acting through the Bureau of Reclamation and Bureau of Indian Affairs, Department of Interior, the Ute Indian Tribe of the Uintah and Ouray Indian Reservation, organized pursuant to the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended, and the Central Utah Water Conservancy District, a public corporation.

W I T N E S S E T H:

WHEREAS, the Central Utah project is planned for development and construction in two phases, initial and ultimate, and

WHEREAS, the project includes three major units, Bonneville, Upalco and Uintah, all or a part of which involve the Uintah and Ouray Indian Reservation within the Uintah Basin, two of which, Bonneville and Upalco, are included in the initial phase and the Uintah in the ultimate phase, and

WHEREAS, there are approximately 36,450 acres of land served or to be served from the Duchesne River, Bonneville Unit; 33,450 acres of land served or to be served from the Lakefork River, Upalco Unit; and 39,648 acres of land served or to be served from the Uintah River, Uintah Unit, either owned by Indians or non-Indians, but all of which

are supplied or are to be supplied with water through original Indian water rights, and

WHEREAS, the Indian water right land has been scheduled in five separate groups for identification purposes, described as group (1) for which a Federal Decree has been entered, 25,070 acres of which are served or to be served from the Lakefork River and 34,152 acres from the Uintah River; group (2) consisting of 16,613 acres designated by the Secretary of the Interior as a part of the Uintah Indian Irrigation Project, and for which a certificate has been issued by the State Engineer of Utah and served from the Duchesne River; group (3) consisting of 1,115 acres designated by the Secretary of the Interior as a part of the Uintah Indian Irrigation Project and served or to be served from the Duchesne River but for which no certificate has been issued by the State Engineer of the State of Utah; group (4) consisting of 1,470 acres of original Indian allotted land served or to be served from the Duchesne River; and group (5) consisting of 29,116 acres of practicably irrigable land presently not under irrigation, 15,242 acres of which are to be served from the Duchesne River, 8,380 acres to be served from the Lakefork River and 5,496 acres to be served from the Uintah River, and

WHEREAS, development of all of group (5) land as proposed to be deferred to the ultimate phase of the Central Utah project, and

WHEREAS, the United States, acting through the Bureau of Reclamation, intends to construct the Bonneville unit of the Central Utah project as a part of the initial phase, and

WHEREAS, there are approximately 36,450 acres of land on the Duchesne River, either owned by Indians or non-Indians, but all of which are supplied or are to be supplied with water through original Indian water rights, and

WHEREAS, part of the Bonneville unit water supply will be used to irrigate approximately 10,000 acres of Indian water right lands under the existing Duchesne Feeder Canal and Midview Reservoir in order to free Lakefork River water for use upstream on lands in the Moon Lake Project, and

WHEREAS, the Ute Indian Reservation was established on the 3rd day of October 1861, embracing all of the three Unit Areas as described in the third whereas clause hereof, with the reservation of then perfected water rights sufficient to satisfy the future as well as the present need of the Indian Reservation with enough water to irrigate all the practicably irrigable acreage of the Reservation, and

WHEREAS, approximately 15,242 acres of practicably irrigable land within the Uintah and Ouray Indian Reservation of said group (5) lands and within said Bonneville Unit Area are presently not under irrigation, and

WHEREAS, the Ute Indian Tribe of the Uintah and Ouray Indian Reservation, for the considerations and subject to the conditions hereinafter stated, is agreeable to defer the use of water on said 15,242 acres of land for development under the ultimate phase of the Central Utah project;

NOW, THEREFORE, in consideration of the mutual and dependent

covenants and conditions herein contained, as is agreed by the parties hereto as follows:

1. That construction of the Bonneville unit, a part of the Central Utah project, initial phase, as authorized by the Congress of the United States, and as planned by the Bureau of Reclamation, may proceed without objection, interference or claim adverse to the water requirements for such unit, as set out in the Duchesne River Area Study Committee, Duchesne River Land and Water Resource Review dated April 1962.

2. That use of water on 21,206 acres of Indian water right land in the Uintah Basin portion of the Bonneville unit, with the priority date of October 3, 1861, described as groups (2), (3), and (4) in said report dated April 1962, is recognized and confirmed.

3. That use of water for the 15,242 acres of Indian owned land, described as group (5) in said Study Committee Report dated April 1962, may be deferred at this time upon the condition that said lands be included in the ultimate phase of the Central Utah project, as hereinafter provided.

4. That deferment of the development of said group (5) lands for irrigation purposes is granted by said Ute Indian Tribe conditioned upon the full and complete recognition of the water rights of said tribe, with a priority date of 1861 in groups (1), (2), (3), (4) and (5) as described in the book of claims filed with the State Engineer, State of Utah, by the Ute Indian Tribe, without resort to litigation.

5. It is further understood and agreed that said deferment

shall neither constitute an abandonment by said tribe, nor be construed as consent to any further deferment of the right to the water so reserved for the 15,242 acres referred to in paragraph 3 above. If the ultimate phase of the Central Utah project is not completed sufficiently to supply said Indian water rights by the 1st day of January, 2005, an equitable adjustment will be made in accordance with said reserved and perfected water rights of the tribe to permit the immediate Indian use of the water so reserved. It is agreed that the first day of January, 2005, shall be mutually considered as the maximum date of deferment and that all phases of the Central Utah project will in good faith be diligently pursued to satisfy all Indian water rights at the earliest possible date. Under no circumstances shall the fixing of such maximum deferment date be construed as an agreement or license to interpose the satisfaction of inferior water rights delaying the satisfaction of said deferred Indian rights, except where the orderly development and construction of the Central Utah project directly requires such deferment of said Indian rights to be supplied from the ultimate phase of said Central Utah project.

6. No Indian water rights, referred to herein, shall restrict the owner thereof to agricultural uses but such rights may be used for purposes other than agricultural, including but not limited to industrial, municipal and recreational uses.

7. That the use of water from the Duchesne River and its tributaries in the Bonneville unit area, unless otherwise agreed in writing, shall be subject (1) to a river headgate diversion allowance

of 4 acre-feet per acre annually and (2) shall be allocated generally in accordance with an ideal demand curve for irrigation purposes, except for the purposes described in paragraph 6 hereof.

8. That the point of diversion from the Duchesne River of the Wissiup Leland and Ouray School canals be moved upstream by the Uintah Indian Irrigation Project to the point-of diversion of the Duchesne Feeder Canal.

9. That facilities will be provided under the Colorado River Storage Act to mitigate for losses to fish, wildlife and recreation upon the lands of the Ute Indian Tribe of the Uintah and Ouray Reservation or of its members caused by the construction and/or operation of the Central Utah project. This provision shall not be construed as any limitation upon the acceptance or use of any benefits as may become available under enhancement provisions of said act.

10. That development of the Uintah Unit of the ultimate phase of the Central Utah project to provide storage of the runoff waters of the Uintah River and its tributaries, be programmed for early authorization and construction.

11. That Bottle Hollow Reservoir be investigated at an early date with a view of including the same as a storage facility of the Uintah Unit.

12. That the exchange of Duchesne River water under the existing Duchesne Feeder Canal and Midview Reservoir for Lakefork River water in order to free Lakefork River water for use upstream on lands in the Moon Lake Project shall not impair the 1861 priority of the

Ute Indian Tribe or its members either in flow or storage right, and such exchange shall not be construed as an exchange of water.

13. Nothing herein contained shall be construed as preventing the construction and use of facilities by the Ute Indian Tribe, the Uintah Indian Irrigation Project, or the United States for storage and use of water upon all Uintah Indian Irrigation Project lands not supplied from facilities constructed under the Central Utah project.

14. This agreement is subject to the approval of the Secretary of the Interior or his duly authorized representative.

UNITED STATES OF AMERICA

BUREAU OF RECLAMATION

By /s/ K. B. Bennett, Jr.
Acting Commissioner

BUREAU OF INDIAN AFFAIRS

By /s/ John O. Crow
Deputy Commissioner

UTE INDIAN TRIBE OF THE UINTAH &
OURAY RESERVATION

By /s/ Francis Wyasket
Chairman

CENTRAL UTAH WATER CONSERVANCY DISTRICT

By /s/ Sterling D. Jones
President

ATTACHMENT G



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AGREEMENT IN PRINCIPLE FOR REVISED AK-CHIN WATER SETTLEMENT

The Department of the Interior and Ak-Chin Indian Community have agreed to revisions of the Act of July 28, 1978, (P.L. 95-328), the Ak-Chin Water Rights Settlement Act, that will: (i) maintain the integrity of the Act; (ii) serve to stabilize the Community's farm operations; (iii) insure a permanent and high priority source of water to the Community; and (iv) reinforce the viability of the use of negotiations as a vehicle for resolving conflicting water claims between Indians and non-Indians.

This agreement forms the basis for further discussions with the Arizona Congressional delegation, the State of Arizona, the Central Arizona Water Conservation District and other affected entities. The objective of this agreement is to secure legislation which will ratify a revised settlement and provide authorization for appropriations to implement the settlement. The major provisions of the agreement are as follows:

Interim Water

The Department will provide \$15 million to satisfy the Community's interim water needs and provide supplemental water beginning in 1988. The Department will seek to provide this funding on a schedule designed to satisfy the Community's needs and requirements. Payment of this sum will be in lieu

of the obligation of the United States to develop a well field on federal lands nearby the Ak-Chin Reservation to meet the emergency water needs of the Community. The Community will determine the most cost-effective means of fulfilling those needs and will have the exclusive determination and responsibility for the use and disposition of that money. The Department will make available the services of the Bureau of Indian Affairs, the Geological Survey and the Bureau of Reclamation to assist the Community.

Interim Damages

The Department's full obligation for the interim water supply from 1984 through 1987 will be met once it has provided funding of \$15 million, a \$3.4 million economic development grant, and \$25.3 million in grants for agricultural development and flood protection.

Permanent Water

Initial deliveries of the permanent water supply through CAP facilities will be made no later than 1988 and such delivery shall constitute performance by the Department under the revised agreement. Damages shall be based in that year on the replacement cost of water not delivered up to a limit of 35,000 acre-feet. To the extent that the United States makes available for delivery all or any portion of that water for beneficial use by the Community, damages shall be based on

the difference between 35,000 acre-feet and the actual amount of water made available for delivery to the Community. The Department will pay all OM&R costs for the permanent water supply. This water supply will be comprised of Ak-Chin's CAP allocation and supplemental Colorado River water which is senior in priority to CAP. The Department will provide the following quantities of water annually or pay damages for failure to deliver the water:

a) Dry years--72,000 acre-feet

The Department will provide a minimum of 72,000 acre-feet of water annually to Ak-Chin in the years in which the shared priorities in the CAP allocations are invoked.

b) Normal and wet years--75,000 acre-feet

The Department will provide 75,000 acre-feet of water to Ak-Chin in all years in which shared priority is not invoked.

Upon request by the Community, the Department will deliver up to 85,000 acre-feet in those years in which sufficient water and canal capacity are available to the Secretary to deliver this water.

Santa Rosa Canal

The Department will ensure that the water is delivered to the Community at flow rates that will meet the peak water requirements on the Reservation not to exceed 300 cfs.

Permanent Water Supply Damages

The Department will be liable for damages when deliveries of permanent water are less than the amount specified in this

agreement. Principles of force majeure will apply to this agreement. For the minimum supply, damages will be equal to replacement cost of water not delivered. In years in which the Community requests additional water, and water and CAP aqueduct capacity are available to the Secretary, damages for failure to deliver the additional water will be equal to the CAP non-Indian agriculture delivery rate plus 20%.

Economic Development Grant

The Department will provide an economic development grant of \$3.4 million to the Ak-Chin Community and \$25.3 million in agricultural development and flood protection grants.

Status of 1978 Act

The Department and the Community agree that the Act of July 28, 1978 (P.L. 95-328) and the contract of May 20, 1980, will remain in full force and effect except as provided in the paragraphs on Interim Water and Permanent Water until the provisions of this agreement in principle have been enacted into law and the permanent water supply has been acquired, delivery facilities have been completed, and initial deliveries have been made of the permanent water supply to the reservation.

The AK-Chin Indian Community and the Department of the Interior hereby agree in principle to this revised proposal and will proceed to pursue its adoption with the appropriate entities.

AK-CHIN INDIAN COMMUNITY

By *Leon M. Kakar*
Leon M. Kakar
Chairman
Ak-Chin Indian Community

THE DEPARTMENT OF THE INTERIOR

By *James G. Watt*
James G. Watt
Secretary of the Interior

LeRoy J. Garcia
LeRoy J. Garcia
Vice Chairman
Ak-Chin Indian Community

Francis J. Antone, Sr.
Francis J. Antone, Sr.
Council Member
Ak-Chin Indian Community

Vera M. Santos
Vera M. Santos
Council Member
Ak-Chin Indian Community

Sept 23, 1983